

STATE OF MICHIGAN
COURT OF APPEALS

JACQUELINE PARADISE, Personal
Representative of the ESTATE OF NICHOLAS
MICHAEL PARADISE,

UNPUBLISHED
August 8, 2013

Plaintiff-Appellee,

v

ESTATE OF HABIB VAZIRI and OAKLAND
PSYCHIATRIC ASSOCIATES, P.C.,

No. 307777
Oakland Circuit Court
LC No. 2010-110358-NH

Defendants,

and

TRINITY HEALTH, TRINITY HEALTH II,
TRINITY HEALTH CORPORATION, TRINITY
HEALTH MICHIGAN, MERCY HEALTH
SERVICES, SISTERS OF MERCY HEALTH
CORPORATION, ST. JOSEPH MERCY
OAKLAND, SJMO, and ST. JOSEPH MERCY
HEALTH SYSTEM, d/b/a ST. JOSEPH
HEALTHCARE,

Defendants-Appellants.

Before: GLEICHER, P.J., and BECKERING and SHAPIRO, JJ.

PER CURIAM.

Defendants, Trinity Health, Trinity Health II, Trinity Health Corporation, Trinity Health Michigan, Mercy Health Services, Sisters of Mercy Health Corporation, St. Joseph Mercy Oakland, SJMO, and St. Joseph Mercy Health System, d/b/a St. Joseph Healthcare, appeal by leave granted the trial court's denial of their motion for summary disposition in this action for

medical malpractice.¹ We reverse and remand to the trial court for entry of summary disposition in favor of defendants.

I. BASIC FACTS

This case stems from the fatal drug overdose of Nicholas Paradise on August 6, 2007. Before his death, Paradise had a history of mental-health issues and substance abuse, including the abuse of Xanax that had been prescribed to him, alcohol, and benzodiazepine. Following hospitalization for an overdose of Xanax on July 21, 2007, Paradise applied for voluntary admission to St. Joseph Mercy Oakland (SJMO) and was found “[c]linically suitable for formal voluntary admission.” After admission to SJMO, Paradise was diagnosed with bipolar disorder, depression, post-traumatic stress disorder (PTSD), and benzodiazepine dependence; his prognosis was deemed “fair to good.” Paradise came under the care of Dr. Vaziri. On July 23, the Oakland County Probate Court scheduled a hearing for July 30 on a petition for Paradise’s involuntary hospitalization. On July 26, Paradise revoked his voluntary hospital admission. Nevertheless, the hospital continued with pharmacological management, supportive interventions, and its search for outpatient treatment options.

On July 30, the probate court entered an order for Paradise to “undergo combined hospitalization and alternative treatment for a period not to exceed 90 days.” The hospitalization period was not to exceed seven days. The court further ordered that in the event Paradise “refuses to comply with a psychiatrist’s order to return to the hospital, a peace officer shall take [Paradise] into protective custody and transport [him] to the hospital designated by the psychiatrist.”

On July 31, Paradise, who indicated his readiness for discharge and anticipation for outpatient treatment, was discharged under the care of his family. The desired placement was not immediately available, but SJMO staff instructed Paradise to attend a scheduled appointment on August 1 for the pursuit of an outpatient treatment program. Paradise attended the scheduled appointment, where he received an evaluation and agreed to contact PACE (Prior Authorization and Central Evaluation) “immediately” for substance-abuse treatment services.

Paradise did not contact PACE. Instead, he met with a prior treating physician on August 2 and obtained a prescription for 90 two-milligram tablets of Xanax. On August 6, police responded to a call of a possible drug overdose involving Paradise. Paradise was pronounced dead at the scene. Friends explained that Paradise had ingested Methadone that he had obtained from another individual. The medical examiner opined that Paradise “died of drug abuse” and noted the presence of “Methadone, Amphetamine, Alprazolam, Citalopram and Quetiapine” in Paradise’s blood. The medical examiner emphasized that Paradise “drank liquid methadone prior to his death” and listed the manner of death as “undeterminable.”

II. ANALYSIS

¹ See, generally, *Estate of Nicholas Michael Paradise v Estate of Habib Vaziri*, unpublished order of the Court of Appeals, entered October 18, 2012 (Docket Nos. 307775 and 307777).

Defendants contend that the trial court erred by denying their motion for summary disposition under MCR 2.116(C)(10). Defendants assert that the trial court should have granted their motion for several reasons, the first of which is that plaintiff, Jacqueline C. Paradise, Paradise's mother and personal representative of his estate, failed to prove that any alleged negligence by defendants was a proximate cause of Paradise's death. We agree.

We review de novo a trial court's ruling on a motion for summary disposition. *Maiden v Rozwood*, 461 Mich 109, 118; 597 NW2d 817 (1999). When reviewing a motion brought under MCR 2.116(C)(10), this Court considers the pleadings, affidavits, depositions, admissions, and any other documentary evidence submitted by the parties in a light most favorable to the nonmoving party. *The Cadle Co v City of Kentwood*, 285 Mich App 240, 247; 776 NW2d 145 (2009). A motion for summary disposition under MCR 2.116(C)(10) may be granted where there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law. *Campbell v Human Servs Dep't*, 286 Mich App 230, 235; 780 NW2d 586 (2009). "A genuine issue of material fact exists when the record, giving the benefit of reasonable doubt to the opposing party, leaves open an issue upon which reasonable minds might differ." *West v Gen Motors Corp*, 469 Mich 177, 183; 665 NW2d 468 (2003).

To establish a claim for medical malpractice, a plaintiff is required to prove "(1) the applicable standard of care, (2) breach of that standard of care by the defendant, (3) injury, and (4) proximate causation between the alleged breach and the injury." *Locke v Pachtman*, 446 Mich 216, 222; 521 NW2d 786 (1994), citing MCL 600.2912a. "'Proximate cause' is a legal term of art that incorporates both cause in fact and legal (or 'proximate') cause." *Craig v Oakwood Hosp*, 471 Mich 67, 86; 684 NW2d 296 (2004).

The cause in fact element generally requires showing that "but for" the defendant's actions, the plaintiff's injury would not have occurred. On the other hand, legal cause or "proximate cause" normally involves examining the foreseeability of consequences, and whether a defendant should be held legally responsible for such consequences.

As a matter of logic, a court must find that the defendant's negligence was a cause in fact of the plaintiff's injuries before it can hold that the defendant's negligence was the proximate or legal cause of those injuries.

Generally, an act or omission is a cause in fact of an injury only if the injury could not have occurred without (or "but for") that act or omission. While a plaintiff need not prove that an act or omission was the sole catalyst for his injuries, he must introduce evidence permitting the jury to conclude that the act or omission was a cause.

It is important to bear in mind that a plaintiff cannot satisfy this burden by showing only that the defendant may have caused his injuries. Our case law requires more than a mere possibility or a plausible explanation. Rather, a plaintiff establishes that the defendant's conduct was a cause in fact of his injuries only if he "sets forth specific facts that would support a reasonable inference of a logical sequence of cause and effect." A valid theory of causation, therefore,

must be based on facts in evidence. And while “the evidence need not negate all other possible causes,” this Court has consistently required that the evidence “exclude other reasonable hypotheses with a fair amount of certainty.” [*Id.* at 86-88 (emphases and alterations omitted).]

“To establish legal cause, the plaintiff must show that it was foreseeable that the defendant’s conduct may create a risk of harm to the victim, and . . . [that] the result of that conduct and intervening causes were foreseeable.” *Lockridge v Oakwood Hosp*, 285 Mich App 678, 684; 777 NW2d 511 (2009) (citation omitted). “An intervening cause is not an absolute bar to liability if it is foreseeable.” *Richards v Pierce*, 162 Mich App 308, 317; 412 NW2d 725 (1987). “Under Michigan negligence jurisprudence, it is not necessary to show that a party’s conduct was ‘the’ proximate cause of the injuries—showing that the party’s conduct was ‘a’ proximate cause of the injuries is sufficient.” *Orzel v Scott Drug Co*, 449 Mich 550, 566-567; 537 NW2d 208 (1995). The issue of proximate cause normally presents a question that is to be decided by the trier of fact. *Farmer v Christensen*, 229 Mich App 417, 424; 581 NW2d 807 (1998). If, however, the facts underlying the issue of proximate cause are not disputed and reasonable minds could not differ, the issue may be decided by the court. *Id.* “[A] proximate cause is a foreseeable, natural, and probable cause of the plaintiff’s injury and damages.” *Unibar Maintenance Servs, Inc v Saigh*, 283 Mich App 609, 625; 769 NW2d 911 (2009) (citation omitted). The plaintiff bears the burden of demonstrating that he suffered an injury that “more probably than not was proximately caused by the negligence of the defendant[.]” MCL 600.2912a(2); see also *Craig*, 471 Mich at 86 n 45.

Relying on this Court’s decision in *Teal v Prasad*, 283 Mich App 384; 772 NW2d 57 (2009), defendants assert that Paradise’s death from an overdose is too far attenuated in time from his discharge from the hospital and that there is a lack of evidence regarding Paradise’s behavior and the circumstances during the period between his discharge and death. Thus, defendants contend that plaintiff has not established a causal chain of events leading to the death of Paradise.

In *Teal*, Dennis Teal had a history of alcohol abuse and depression; he began drinking heavily and stopped taking his antidepressant medication when his wife filed for divorce. *Id.* at 386. On March, 18, 2004, Teal attempted suicide, but the police found him and took him to the University of Michigan Hospital. *Id.* Dr. Prasad conducted Teal’s initial evaluation, admitted him, monitored his depression symptoms and suicidal intentions, placed him back onto antidepressants, and found him uncooperative. *Id.* at 386-387. Dr. Thielking began treating Teal on March 20; he found Teal to be much more cooperative. *Id.* at 387. Teal expressed a desire to get back onto his medication and resume Alcoholics Anonymous (AA) meetings. *Id.* Teal told Dr. Thielking on March 21 that he did not have suicidal intentions and needed treatment. *Id.* Dr. Prasad discharged Teal from the hospital the next day. *Id.* Teal received instructions to continue taking the antidepressants, to live with a family member, and to continue follow-up treatments with his therapist. *Id.* at 387-388. Teal signed an agreement to attend AA meetings. *Id.* During an evaluation with a social worker on March 29, Teal stated that he continued to have suicidal thoughts but that he did not intend to act on them. *Id.* Teal committed suicide the next day. *Id.*

Teal’s wife sued Dr. Prasad and other doctors at the hospital, claiming that they committed malpractice by not properly diagnosing and treating Teal’s depression, alcoholism,

and suicidal tendencies and by prematurely discharging him from the hospital. *Id.* at 388-389. Teal's wife insisted that the doctors' negligence caused Teal to commit suicide. *Id.* at 389. This Court held that "Teal's suicide was too remote in time, and likely too influenced by intervening factors, to establish a question of material fact regarding the causation element." *Id.* at 390. We explained that Teal committed suicide eight days after he was discharged from the hospital. *Id.* at 393. And we emphasized that causation could not be established merely by showing that there was a correlation between the doctors' negligent conduct and Teal's injuries. *Id.* at 392. We further opined:

Admittedly, if defendants had locked Teal away for the rest of his life without access to a piece of rope or cord, he likely would not have hanged himself at his home on March 30, 2004. But this Court cannot determine whether defendants were the cause in fact of Teal's suicide by imagining every possible scenario and determining whether the likelihood of Teal's death would have diminished in each situation. Instead, the requirement is affirmative: plaintiff must provide sufficient evidence to establish "a reasonable inference of a logical sequence of cause and effect," and not merely speculate, on the basis of a tenuous connection, that Teal would not have committed suicide if he had not been discharged on a given day more than a week before.

* * *

Plaintiff also presented no evidence indicating how Teal's discharge, whether premature or not, triggered a chain of events leading to Teal's suicide. In the absence of such evidence, plaintiff's claim that defendants' alleged malpractice caused Teal's death eight days later constitutes mere speculation.

* * *

Any arguments regarding the causes of Teal's suicide are speculative, because there is scant evidence establishing Teal's mental state, thoughts, and suicidal tendencies after his discharge from the hospital. This is not a situation in which defendants knew that Teal was suicidal and would kill himself as soon as he had the chance, yet discharged him and watched as he collected rope, made a noose, and hanged himself from a nearby tree. It was not evident in this case that but for defendants' decision to discharge Teal on March 22, Teal would not have killed himself on March 30. [*Id.* at 392-394 (internal citations omitted).]

As in *Teal*, we conclude that plaintiff has failed to establish the cause-in-fact element of proximate cause. The connection between defendants' allegedly negligent conduct of discharging Paradise and his subsequent injury is too speculative. There is little known regarding Paradise's behavior during the six-day period between his attendance at the scheduled appointment and his death. Although it is true that if Paradise had remained hospitalized there is a lesser probability that he would have fatally overdosed, this mere correlation does not establish causation. See *id.* at 392. Certainly, as in *Teal*, the possibility of Paradise's lethal overdose would have been greatly reduced, if not eliminated, had Paradise remained hospitalized for the rest of his life without access to the drugs that killed him. See *id.* "But this Court cannot

determine whether defendants were the cause in fact of [Paradise's death] by imagining every possible scenario and determining whether the likelihood of [Paradise's] death would have been diminished in each situation." *Id.* Rather, plaintiff must "set forth specific facts that would support a reasonable inference of a logical sequence of cause and effect." *Id.* at 394-395.

Plaintiff has not presented any evidence indicating how Paradise's discharge triggered the causal chain leading to Paradise's death. See *id.* at 394. Paradise's obtainment and ingestion of Methadone, a substance not prescribed to him, cannot be attributed to defendants.² Although Paradise had a history of overdosing, this behavior involved Xanax that had been prescribed to him and occasional complications from his concurrent ingestion of alcohol. Defendants did not provide Paradise with a prescription for Methadone at the time of discharge, and the available medical records do not show the use of Methadone as a component of Paradise's substance-abuse history.

The testimony of plaintiff's expert, Dr. Gerald Shiener, did not establish factual causation. Although Dr. Shiener hypothesized that Paradise suffered from "substance-induced mixed mood disorder," he testified that in order to make an "accurate diagnosis," it would be necessary to obtain "a history of the substances [Paradise] used and the manner in which he used them" Yet, Dr. Shiener acknowledged that he did not read or review all of Paradise's medical history and records, rendering his diagnosis questionable by his own standards. Furthermore, Dr. Shiener could not say definitively that Paradise would have been successful if provided his recommended form of treatment. He opined, "Not all patients respond at the same rate and yes, there might be some patients that don't respond, but for a period of days, I don't think there was adequate time under adequate stability of conditions to determine whether this patient could have responded or not." Shiener recognized that "substance abuse programs

² Contrary to the trial court's conclusion, the documentary evidence reveals that there is no factual dispute that Methadone caused Paradise's death. Defendants' expert, Dr. Daniel Spitz, attested that Paradise more likely than not died as the result of ingesting Methadone while simultaneously taking Xanax, which induced respiratory depression or a sudden cardiac event. He explained that after Paradise ingested the Methadone, Paradise complained that he was "itching all over" and "very sleepy," which are "signs and symptoms of Methadone overdose." The other documentary evidence before the trial court was not inconsistent with this testimony. The medical examiner opined that Paradise "died of drug abuse" and noted the presence of "Methadone, Amphetamine, Alprazolam, Citalopram and Quetiapine" in Paradise's blood. He emphasized that Paradise "drank liquid methadone prior to his death." The medical examiner's listing of the manner of Paradise's death as "undeterminable," which signifies that the medical examiner could not conclude whether Paradise's death was accidental or a suicide, does not contradict the conclusion that Methadone caused Paradise's death. Furthermore, Plaintiff's expert, Dr. Gerald Shiener, acknowledged that the risk of death posed by Paradise's prescribed medication, Xanax, was "quite low," unless combined with other sedatives. He testified that Methadone was "the most lethal" of the drugs in Paradise's system and can be "quite dangerous" when taken in conjunction with other sedatives; he opined that the cause of Paradise's death was "[l]ikely a combination of [Methadone] and benzodiazepines."

admonish us to look at recovery as a one day at a time process and there are a number of things that need to be addressed,” including the provision of counseling and the prescription of medication, further implying the speculative nature of Paradise’s potential for a true recovery.

Accordingly, the connection between defendants’ alleged negligent conduct of discharging Paradise and his subsequent injury is too speculative to establish factual causation. Plaintiff has not “set forth specific facts that would support a reasonable inference of a logical sequence of cause and effect.” *Id.* at 394-395. The trial court erred by denying defendants’ motion for summary disposition on the basis of plaintiff’s inability to establish proximate causation.³

Reversed and remanded to the trial court for entry of summary disposition in favor of defendants. We do not retain jurisdiction.

/s/ Elizabeth L. Gleicher
/s/ Jane M. Beckering

³ In light of this conclusion, it is unnecessary for this Court to address defendants’ arguments regarding the applicability of the wrongful-conduct rule and MCL 600.2955a.